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UNITED PARCEL SERVICE, INC.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17

18 OMAR ZANDERS, an individual,
19 Plaintiff,
20
21 vs.
22 UNITED PARCEL SERVICE, INC., a
Delaware corporation; and DOES 1-20,
23 Defendants.
24
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26
27
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Case No. 2:17-cv-04133-DSF-PLAx
**STIPULATED PROTECTIVE
ORDER**

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15
16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, development, commercial,
18 financial, technical and/or proprietary information for which special protection
19 from public disclosure and from use for any purpose other than prosecution of this
20 action is warranted. Such confidential and proprietary materials and information
21 consist of, among other things, confidential business or financial information,
22 information regarding confidential business practices, or other confidential
23 research, development, or commercial information (including information
24 implicating privacy rights of third parties), information otherwise generally
25 unavailable to the public, or which may be privileged or otherwise protected from
26 disclosure under state or federal statutes, court rules, case decisions, or common
27 law. Accordingly, to expedite the flow of information, to facilitate the prompt
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1 resolution of disputes over confidentiality of discovery materials, to adequately
2 protect information the parties are entitled to keep confidential, to ensure that the
3 parties are permitted reasonable necessary uses of such material in preparation for
4 and in the conduct of trial, to address their handling at the end of the litigation, and
5 serve the ends of justice, a protective order for such information is justified in this
6 matter. It is the intent of the parties that information will not be designated as
7 confidential for tactical reasons and that nothing be so designated without a good
8 faith belief that it has been maintained in a confidential, non-public manner, and
9 there is good cause why it should not be part of the public record of this case.

11 **2. DEFINITIONS**

12 2.1 Action: *Omar Zanders V. United Parcel Service, Inc., A Delaware*
13 *Corporation; and Does 1-20, Case No. 2:17-cv-04133-DSF-PLA.*

14 2.2 Challenging Party: a Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
19 the Good Cause Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
21 their support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless
26 of the medium or manner in which it is generated, stored, or maintained (including,
27 among other things, testimony, transcripts, and tangible things), that are produced
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1 or generated in disclosures or responses to discovery in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as
4 an expert witness or as a consultant in this Action.

5 2.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association,
9 or other legal entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees of a
11 party to this Action but are retained to represent or advise a party to this Action and
12 have appeared in this Action on behalf of that party or are affiliated with a law firm
13 that has appeared on behalf of that party, including support staff.

14 2.11 Party: any party to this Action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide litigation
20 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
22 and their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery Material that is
24 designated as “CONFIDENTIAL.”

25 2.15 Receiving Party: a Party that receives Disclosure or Discovery
26 Material from a Producing Party.

27 //

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.
7

8 **4. DURATION**

9 Once a case proceeds to trial, all of the court-filed information to be
10 introduced that was previously designated as confidential or maintained pursuant to
11 this protective order becomes public and will be presumptively available to all
12 members of the public, including the press, unless compelling reasons supported by
13 specific factual findings to proceed otherwise are made to the trial judge in advance
14 of the trial. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-
15 81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
16 produced in discovery from “compelling reasons” standard when merits-related
17 documents are part of court record). Accordingly, absent a contrary ruling of the
18 Court, the terms of this protective order do not extend beyond the commencement
19 of the trial.
20

21 **5. DESIGNATING PROTECTED MATERIAL**

22 5.1 Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Non-Party that designates information or items for protection
24 under this Order must take care to limit any such designation to specific material
25 that qualifies under the appropriate standards. The Designating Party must
26 designate for protection only those parts of material, documents, items, or oral or
27 written communications that qualify so that other portions of the material,
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1 documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to
6 impose unnecessary expenses and burdens on other parties) may expose the
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced. Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix, at a minimum, the legend
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
20 contains protected material. If only a portion or portions of the material on a page
21 qualifies for protection, the Producing Party also must clearly identify the protected
22 portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-
23 Party that makes original documents available for inspection need not designate
24 them for protection until after the inspecting Party has indicated which documents it
25 would like copied and produced. During the inspection and before the designation,
26 all of the material made available for inspection shall be deemed
27 "CONFIDENTIAL." After the inspecting Party has identified the documents it
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1 wants copied and produced, the Producing Party must determine which documents,
2 or portions thereof, qualify for protection under this Order. Then, before producing
3 the specified documents, the Producing Party must affix the “CONFIDENTIAL
4 legend” to each page that contains Protected Material. If only a portion or portions
5 of the material on a page qualifies for protection, the Producing Party also must
6 clearly identify the protected portion(s) (e.g., by making appropriate markings in
7 the margins).

8 (b) for testimony given in depositions that the Designating Party
9 identify the Disclosure or Discovery Material on the record, before the close of the
10 deposition.

11 (c) for information produced in some form other than documentary
12 and for any other tangible items, that the Producing Party affix in a prominent place
13 on the exterior of the container or containers in which the information is stored the
14 legend “CONFIDENTIAL.” If only a portion or portions of the information
15 warrants protection, the Producing Party, to the extent practicable, shall identify the
16 protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the Designating Party’s right to secure protection under this Order for such
20 material. Upon timely correction of a designation, the Receiving Party must make
21 reasonable efforts to assure that the material is treated in accordance with the
22 provisions of this Order.

23 24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1, *et seq.* Any discovery motion must
3 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

4 6.3 Burden. The burden of persuasion in any such challenge proceeding
5 shall be on the Designating Party. Frivolous challenges, and those made for an
6 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
7 other parties) may expose the Challenging Party to sanctions. Unless the
8 Designating Party has waived or withdrawn the confidentiality designation, all
9 parties shall continue to afford the material in question the level of protection to
10 which it is entitled under the Producing Party's designation until the Court rules on
11 the challenge.

12 13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this
16 Action only for prosecuting, defending, or attempting to settle this Action. Such
17 Protected Material may be disclosed only to the categories of persons and under the
18 conditions described in this Order. When the Action has been terminated, a
19 Receiving Party must comply with the provisions of section 13 below (FINAL
20 DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
22 location and in a secure manner that ensures that access is limited to the persons
23 authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
25 otherwise ordered by the Court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated
27 "CONFIDENTIAL" only to:
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1 (a) the Receiving Party's Outside Counsel of Record in this Action,
2 as well as employees of said Outside Counsel of Record to whom it is reasonably
3 necessary to disclose the information for this Action;

4 (b) the officers, directors, and employees (including House
5 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
6 Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to
8 whom disclosure is reasonably necessary for this Action and who have signed the
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably necessary for this Action
14 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
15 A);

16 (g) the author or recipient of a document containing the information
17 or a custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses, and attorneys for witnesses,
19 in the Action to whom disclosure is reasonably necessary provided: (1) the
20 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
21 and (2) they will not be permitted to keep any confidential information unless they
22 sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
23 otherwise agreed by the Designating Party or ordered by the Court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal Protected
25 Material may be separately bound by the court reporter and may not be disclosed to
26 anyone except as permitted under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting
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1 personnel, mutually agreed upon by any of the parties engaged in settlement
2 discussions.

3
4 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
5 **PRODUCED IN OTHER LITIGATION**

6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this Action as
8 “CONFIDENTIAL,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification
10 shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order
12 to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Protective Order. Such notification shall include
14 a copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL” before a determination by the court from which the
20 subpoena or order issued, unless the Party has obtained the Designating Party’s
21 permission. The Designating Party shall bear the burden and expense of seeking
22 protection in that court of its confidential material and nothing in these provisions
23 should be construed as authorizing or encouraging a Receiving Party in this Action
24 to disobey a lawful directive from another court.

25
26 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
27 **PRODUCED IN THIS LITIGATION**

28 (a) The terms of this Order are applicable to information produced by a

1 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
2 produced by Non-Parties in connection with this litigation is protected by the
3 remedies and relief provided by this Order. Nothing in these provisions should be
4 construed as prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to
6 produce a Non-Party’s confidential information in its possession, and the Party is
7 subject to an agreement with the Non-Party not to produce the Non-Party’s
8 confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the Non-
10 Party that some or all of the information requested is subject to a confidentiality
11 agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the Stipulated
13 Protective Order in this Action, the relevant discovery request(s), and a reasonably
14 specific description of the information requested; and

15 (3) make the information requested available for inspection by the
16 Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this Court within
18 14 days of receiving the notice and accompanying information, the Receiving Party
19 may produce the Non-Party’s confidential information responsive to the discovery
20 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
21 not produce any information in its possession or control that is subject to the
22 confidentiality agreement with the Non-Party before a determination by the Court.
23 Absent a court order to the contrary, the Non-Party shall bear the burden and
24 expense of seeking protection in this Court of its Protected Material.

25
26 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28

1 Protected Material to any person or in any circumstance not authorized under this
2 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
3 writing the Designating Party of the unauthorized disclosures, (b) use its best
4 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
5 person or persons to whom unauthorized disclosures were made of all the terms of
6 this Order, and (d) request such person or persons to execute the “Acknowledgment
7 and Agreement to Be Bound” that is attached hereto as Exhibit A.

8 9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain
12 inadvertently produced material is subject to a claim of privilege or other
13 protection, the obligations of the Receiving Parties are those set forth in Federal
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
15 whatever procedure may be established in an e-discovery order that provides for
16 production without prior privilege review. Pursuant to Federal Rule of Evidence
17 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
18 of a communication or information covered by the attorney-client privilege or work
19 product protection, the parties may incorporate their agreement in the stipulated
20 protective order submitted to the Court.

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order, no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in
27 this Stipulated Protective Order. Similarly, no Party waives any right to object on
28

1 any ground to use in evidence of any of the material covered by this Protective
2 Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material
5 may only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue; good cause must be shown in the request to file
7 under seal. If a Party's request to file Protected Material under seal is denied by the
8 Court, then the Receiving Party may file the information in the public record unless
9 otherwise instructed by the Court.

10 11 **13. FINAL DISPOSITION**

12 After the final disposition of this Action, within 60 days of a written request
13 by the Designating Party, each Receiving Party must return all Protected Material to
14 the Producing Party or destroy such material. As used in this subdivision, "all
15 Protected Material" includes all copies, abstracts, compilations, summaries, and any
16 other format reproducing or capturing any of the Protected Material. Whether the
17 Protected Material is returned or destroyed, the Receiving Party must submit a
18 written certification to the Producing Party (and, if not the same person or entity, to
19 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
20 appropriate) all the Protected Material that was returned or destroyed and (2)
21 affirms that the Receiving Party has not retained any copies, abstracts,
22 compilations, summaries or any other format reproducing or capturing any of the
23 Protected Material. Notwithstanding this provision, counsel are entitled to retain an
24 archival copy of all pleadings, motion papers, trial, deposition, and hearing
25 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
26 reports, attorney work product, and consultant and expert work product, even if
27 such materials contain Protected Material. Any such archival copies that contain or
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1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3
4 14. Any violation of this Order may be punished by any and all appropriate
5 measures including, without limitation, contempt proceedings and/or monetary
6 sanctions.

7
8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

9 DATED: August 4, 2017

LIM LAW GROUP, P.C.

10
11 BY: /s/ Preston H. Lim
PRESTON H. LIM

12 Attorneys for Plaintiff
13 OMAR ZANDERS

14
15 DATED: August 4, 2017

GRUBE BROWN & GEIDT LLP

16
17 BY: /s/ Elizabeth A. Brown
ELIZABETH A. BROWN

18 Attorneys for Defendant
19 UNITED PARCEL SERVICE, INC.

20 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

21 DATED: August 7, 2017

22
23 

24 Paul L. Abrams
25 United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of : *Omar Zanders V. United Parcel Service, Inc., A Delaware*
8 *Corporation; and Does 1-20*, Case No. 2:17-cv-04133-DSF-PLA. I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print or
19 type full name] of _____ [print or type
20 full address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____